THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 551 of 2002
(Under Article 227 of the Constitution of India)

1. Nakkal Singh, S/O Chattar Singh
2. Smt. Satya Devi W/O Nakkal Singh
   Both R/O Dhandara, Paragna Roorkee,
   District Haridwar.

..... **Petitioners.**

Versus

1. District Deputy Director of Consolidation/District Magistrate Haridwar.
2. Assistant Settlement Officer Consolidation Roorkee, Haridwar.
3. Consolidation Officer Roorkee, West-1, Haridwar.
4. State of Uttaranchal through Collector Haridwar.
5. Amit Tyagi, S/O Santosh Tyagi,
6. Santosh Tyagi, S/O Ishwar Dayal Tyagi,
   R/O village and Post Raban alias Bara Gaon
   Tehsil Khekra, District Bagpath.

…… **Respondents.**

Sri M.C. Kandpal, Sr. Adv. Assisted by Sri Kurban Ali Adv., learned counsel for the petitioners.
Sri Nand Prasad, Learned Standing Counsel for the respondent No. 1 to 4.
Sri P.S. Rawat and Sri Lokpal Singh, for respondent nos. 5 and 6.

Dated March 24, 2006.
(Hon'ble B.S. Verma, J.)

The petitioners have filed the present Writ Petition for quashing the orders dated 7.6.2000, 4.6.2001 and 27.6.2002 passed by the respondent nos. 3,2 and 1 respectively (Annexure Nos. 1,2 and 3 to the writ petition). By the impugned order dated 7-6-2000, the Consolidation Officer Roorkee has ordered mutation of the name of Amit Kumar Tyagi in place of petitioners on the basis of the sale-deeds dated 30.9.99. By order dated 4.6.2001, the Assistant Settlement Officer Consolidation Haridwar/Roorkee has dismissed the appeal preferred by the petitioners against the order dated 7.6.2000. Ultimately, the Revision No. 443 of 2001 preferred by the Petitioners before the Deputy Director of Consolidation Haridwar was dismissed and the impugned orders dated 7.6.2000 and 4.6.2001 were maintained.

Brief facts of the case are that regarding the land in question, the petitioners had executed a registered power of attorney on 26.7.1999 in favour of Santosh Tyagi, respondent no.6, which was subsequently cancelled by the petitioners on 29.10.1999.

Before cancellation of the Power of Attorney, the respondent no. 6, on the basis of attorney, had executed sale deed in favour of the respondent no. 5 Amit Tyagi on 30.08.1999.

Before the Consolidation Officer, the petitioners filed objection that the sale deed executed by attorney holder is forged. The respondent no.5 has proved the sale deed before the Consolidation Officer and Santosh Tyagi, attorney holder, stated on oath that he had executed the sale deed in favour of respondent no.5. The respondent no.5 examined himself and attesting witness Sri Laxman Prasad Advocate to prove the sale deed in question.

It is admitted to the petitioners that the Power of Attorney was cancelled after the execution of the sale deed, hence on the date of execution of the sale deed, i.e. 30.8.1999, in favour of the respondent no.5, the attorney holder was duly empowered to execute the sale deed on behalf of the petitioner. Therefore, the objection of the petitioner ws rejected by the Consolidation Officer, who ordered to mutate the name of the respondent no. 5 on the basis of the sale deed vide order dated 7-6-2000. Aggrieved by the said order, the petitioners filed appeal before the Assistant Settlement Officer Consolidation Haridwar which was registered as Appeal No. 963, which was dismissed on the same ground vide order dated 4.6.2001. The petitioners preferred Revision before the Deputy Director of Consolidation, which too was dismissed vide order dated 27.6.2002.

In the writ jurisdiction, this Court cannot re-appreciate the evidence. The evidence was led by the parties and the sale-deed

in question was proved. The only question to be examined is whether the attorney holder was empowered to execute the sale deed on the relevant date on the basis of Power of Attorney. Learned Senior Advocate Sri M.C. Kandpal assisted by Sri Kurban Ali has also admitted this fact that the power of attorney was cancelled subsequent to the execution of the sale deed in question. The record shows that the attorney holder had admitted the execution of the sale deed before the Consolidation Authority, therefore, it cannot be said that he power of attorney was not in existence on the date of execution of the sale deed.

Having gone through the entire material on record, I find that the orders passed by the consolidation Officer Roorkee, Assistant Settlement Officer Consolidation Haridwar and the Deputy Director of Consolidation, i.e. respondent nos. 3,2 and 1 respectively, do not suffer form any manifest error of law. All the three courts below have considered the question whether the power of attorney executed by the petitioner in favor of respondent no. 6 was valid and effective on the date of execution of sale deed. As mentioned above, it is admitted to the petitioners that the power of attorney was cancelled on 29.10.1999 while the sale deed was executed on 30.8.1999 on the basis of registered Power of Attorney dated 26.7.99 by the attorney holder. In view of this position, the objections of the petitioners were rightly rejected by the courts below.

The writ petition is devoid of merit and without substance.

The writ petition is hereby dismissed. No order as to costs.

(B. S. Verma, J.)